

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MAR 18 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

GERARDO HERNANDEZ,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

No. 17-70065

Agency No. A090-035-320

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted March 12, 2019\*\*

Before: LEAVY, BEA, and N.R. SMITH, Circuit Judges.

Gerardo Hernandez, a native and citizen of Mexico and a legal permanent resident, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). Our jurisdiction is governed by 8 U.S.C.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1252. We review de novo questions of law. *Ahmed v. Holder*, 569 F.3d 1009, 1012 (9th Cir. 2009). We deny in part and dismiss in part the petition for review.

Hernandez does not address the BIA's determination that he waived any challenge to the IJ's findings that he is removable based on his 2014 conviction, and that his 2014 conviction is an aggravated felony that renders him statutorily ineligible for asylum. *See Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (issues not raised in an opening brief are waived).

Because Hernandez was found removable due to his aggravated felony conviction, our jurisdiction to review the particularly serious crime determination is limited to colorable constitutional claims and questions of law. *See* 8 U.S.C. § 1252(a)(2)(C)-(D); *Pechenkov v. Holder*, 705 F.3d 444, 448-49 (9th Cir. 2012). To the extent Hernandez contends the agency incorrectly concluded his conviction is a per se particularly serious crime, we reject this contention because the BIA instead conducted a case-specific analysis in reaching its conclusion. *See* 8 U.S.C. § 1231(b)(3)(B); *Delgado v. Holder*, 648 F.3d 1095, 1103-05 (9th Cir. 2011). We lack further jurisdiction over Hernandez's withholding of removal claim. *See Pechenkov*, 705 F.3d at 448-49.

Because the aggravated felony determination is dispositive as to asylum, and the particularly serious crime determination is dispositive as to withholding of removal, we do not, and the BIA was not required to, address Hernandez's

remaining contentions regarding eligibility for asylum and withholding of removal. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (courts and agencies are not required to decide issues unnecessary to the results they reach).

Hernandez does not address the BIA's determination that he waived any challenge to the IJ's denial of CAT relief. *See Rizk*, 629 F.3d at 1091 n.3. We therefore do not reach his remaining unexhausted contentions regarding CAT relief. *See id.*; *Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010) (review is limited to the actual grounds relied upon by the BIA); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (the court lacks jurisdiction to consider contentions not presented in an alien's administrative proceedings before the agency).

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**